

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/166064

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 2015, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was begun on July 16, 2015 and continued and completed on August 28, 2015, at Madison, Wisconsin. At the request or agreement of the parties, hearings set for June 3, 2015, July 1, 2015, and July 16, 2015 were rescheduled.

The petitioners, [REDACTED] and [REDACTED], agreed to the consolidation of their cases so that those cases were addressed in the July 16, 2015 and continued hearing on August 28, 2015 in the following cases: a) [REDACTED] in FOO-166062 and CCB-166084 regarding the discontinuances of both of those program effective April 1, 2015 (Ms. [REDACTED] did not timely appeal to DHA the April 1, 2015 discontinuance of her BC benefits); and b) [REDACTED] in FOO-166062, BCS-166064, and CCB-166061 regarding the discontinuances of each of those three programs effective April 1, 2015.

Attorney [REDACTED] represented only Mr. [REDACTED] in his three above cases, but Ms. [REDACTED] represented herself pro se during for her two above cases. This ALJ sent a September 4, 2015 Status Report to the parties. At the request of the parties, the record was held open for written closing arguments to be submitted by each party for the three cases of [REDACTED]. Attorney [REDACTED] submitted a September 25, 2015 closing argument which was received at DHA on September 25, 2015. Mr. [REDACTED]'s September 28, 2015 closing argument was received at DHA on September 30, 2015. Both closing arguments are received into the hearing record.

The issue for determination in the above-captioned case is whether the county agency correctly discontinued petitioner's BadgerCare (BC) Plus benefits effective April 1, 2015, due to failure to timely verify accurate household composition and household income (boyfriend residing in petitioner's residence and his income).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] fraud investigator
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Since about 2008, the petitioner's girlfriend has been [REDACTED].
3. [REDACTED] resides with her three children.
4. [REDACTED] and [REDACTED] have two children in common: CW (age 4); and DW (age 1).
5. [REDACTED] has resided in one side of an attached duplex at [REDACTED] in Madison, WI since 2008.
6. The petitioner has received FoodShare (FS), Child Care (CC), and BadgerCare (BC) benefits from the county agency during the period in question for this appeal.
7. Ms. [REDACTED] and Mr. [REDACTED] alleged that [REDACTED] resided in the other side of the duplex ([REDACTED]), but the agency established by the preponderance of the evidence that he actually resided with petitioner at [REDACTED] for at least the past four years and likely since 2008.
8. The county agency sent separate February 20, 2015 Notices of Proof Needed to [REDACTED] and [REDACTED] requesting verification of her household composition and information confirming his and her place of residence by the deadline of March 2, 2015. See Exhibit A. Both parties failed to timely provide the required verification to the agency.
9. Mr. [REDACTED] has been the owner/operator of the business, [REDACTED] located at [REDACTED] in Madison, WI [REDACTED].
10. [REDACTED] worked at [REDACTED] and helped to operate or co-manage that business for [REDACTED]. Exhibits F, G, H and I.
11. The county agency sent a March 9, 2015 Notice to [REDACTED] stating that her FoodShare (FS) and BadgerCare (BC) benefits would discontinue effective April 1, 2015, due to failure to provide timely required verification to the agency. Exhibit A.
12. The county agency sent March 3, 2015 Notices to [REDACTED] stating that his FS, BC and Child Care (CC) benefits would discontinue effective April 1, 2015, due to failure to provide timely required verification to the county agency. Exhibit A.
13. The county agency established with the following reliable evidence that Mr. [REDACTED] resided with Ms. [REDACTED] at [REDACTED] in Madison, WI: a) mail sent by the agency to Mr. [REDACTED] at [REDACTED] was forwarded by the post office to [REDACTED] (Exhibit

- B); b) Mr. [REDACTED] and Ms. [REDACTED] have two very young children (ages 1 and 4) in common and the allegation that they live separately in the same attached duplex appears self-serving and highly questionable; c) Madison Detective [REDACTED] testified under oath that the landlord (Mr. [REDACTED]) during a June 10, 2015 interview stated to him that [REDACTED] is and has been a vacant property, and that [REDACTED] and [REDACTED] have resided together at [REDACTED] since 2008. Testimony of Detective [REDACTED] at the July 16, 2015 hearing.
14. The landlord of the duplex ([REDACTED] “[REDACTED]” [REDACTED]) testified to the following during the July 16, 2015 hearing: a) that [REDACTED] has been used for storage for at least the last few years; b) he has never issued a set of keys to Mr. [REDACTED] to live at [REDACTED]; c) [REDACTED] has been a “vacant,” uninhabited property since about 2008, and has been used for storage space which was supported by the reliable testimony of Madison Detective [REDACTED] (July 16, 2015 hearing) and Madison Police Officer [REDACTED] (August 28, 2015 continued hearing). Exhibit D.
15. Ms. [REDACTED] has had a close business relationship with Mr. [REDACTED]’s business, [REDACTED], but she was not credible in her denial of such relationship because: a) the Articles of Incorporation for [REDACTED] indicate a continued usage of a mailing address of [REDACTED] (Exhibit F); b) Mr. [REDACTED] uses [REDACTED] on his Food and Drink licenses (Exhibit F, pp. 62-66); c) [REDACTED]’s signature is present on some of the health inspection documents associated with [REDACTED] (Exhibit F, pp 53-61 and Exhibit G); d) in social media, Ms. [REDACTED] represented herself as co-owning the business with Mr. [REDACTED] in a Wisconsin State Journal article and on a LinkedIn account (Exhibit I, pp 98-105); d) the contradictions in Ms. [REDACTED]’s testimony that she has little or nothing to do with Mr. [REDACTED]’s businesses are not credible; e) both Ms. [REDACTED] and Mr. [REDACTED] have the motive to hide that they reside together in order to maintain and continue separate public assistance cases in FS, BC and CC; and f) Ms. [REDACTED]’s ongoing denial of her involvement in Mr. [REDACTED]’s business undermined her overall credibility.

DISCUSSION

A person is eligible for BadgerCare or Medical Assistance (MA) if s/he meets all non-financial and financial requirements. Medicaid Eligibility Handbook, § 1.1.1. (This is available online at <http://www.emhandbooks.wi.gov/meh/>).

An applicant for MA or a representative acting on the applicant’s behalf is responsible for providing the agency with full, correct, and truthful information. Wis. Adm. Code §DHS 102.01(6). Income and assets must be verified. §DHS 102.03(3) (a) and (h). **MA shall be denied when the applicant is able to produce the required verification but fails to do so. §DHS 102.03(1).** (Emphasis added). If the applicant is unable to produce the verification, the agency must assist her/him. Id. An application must be processed within 30 days of its filing date. §DHS 102.04(1); §DHS 104.01(10). If there is a delay in securing information, the agency must notify the applicant of the delay and the reason for the delay. §DHS 102.04(1).

The Department interprets those requirements in its Income Maintenance Manual, Chapter I, Part C. Asset and income verification is mandatory. IMM, I-C-9.3.0 & 9.1.0. The county shall deny benefits when all of the following are true: (1) the applicant has been given adequate notice of the verification required, (2) the verification is necessary to determine current eligibility, (3) the applicant has the power to produce the verification, (4) the time allowed to produce the verification has passed. IMM, I-C-3.3.0. The agency generally should allow **10 days for verification**, but it cannot deny an application until at least 31 days have passed since it was filed. IMM, I-C-5.1.0.

During the July 16, 2015 and continued August 28, 2015 hearings, the county representative provided reliable documentation that the verification requests and negative notices were sent to the petitioner. Those notices stated the reason for the discontinuance of petitioner's FoodShare (FS), BadgerCare (BC) and child care (CC) due to failure to timely verify accurate household composition and income to the county agency. The petitioner was unable to refute the county's case with any reliable testimony or evidence. It was the petitioner's responsibility to provide all required information so that FS, BC, and CC eligibility could be accurately determined by the county agency. As indicated above, FS recipients are required to timely verify all necessary information to order to determine the petitioner's FS eligibility and benefits. The petitioner did not submit all required and accurate verification.

During the July 16, 2015 and continued hearing on August 28, 2015 and in its voluminous exhibits, the county agency representative and witnesses established that the county agency correctly discontinued the petitioner's FoodShare (FS), BadgerCare (BC), and Child Care (CC) benefits effective April 1, 2015, due to petitioner's failure to timely verify accurate household composition and income because [REDACTED] resided in the household with Ms. [REDACTED], and petitioner failed to provide his income information. As indicated in the above Findings of Fact, the agency performed a thorough investigation to confirm that it correctly discontinued the petitioner's FS, BC, and CC benefits. The testimony by Detective [REDACTED] was particularly persuasive in establishing that [REDACTED] has resided with Ms. [REDACTED] at [REDACTED] since about 2008. See Finding of Fact #12 above.

During the hearing and in her written closing argument, Attorney [REDACTED] attempted to undermine the agency's case, and to create some questions about the reliability of the agency's case. Ms. [REDACTED] was not convincing in her many allegations. Ms. [REDACTED] argued unpersuasively that the county agency failed to meet its burden of proof (preponderance of the evidence) that the agency correctly discontinued petitioner's FoodShare (BC) benefits effective April 1, 2015, due to failure to timely verify accurate household composition and household income. However, as indicated in Findings of Fact #13 - #15 above, the county agency did meet its burden of proof.

Ms. [REDACTED] also argued that the "leases" submitted by petitioner should have been sufficient evidence that [REDACTED] did not reside with [REDACTED]. However, such argument is unconvincing because there was substantial reliable evidence in the hearing record to support that the reliability of those leases was highly questionable. See Findings of Fact #13 and #14 above. There were valid questions raised about the alleged "leases" to [REDACTED] to [REDACTED], and whether those "leases" were reliable and authentic evidence. The agency responded that the leases have likely been forged or altered.

In addition, Ms. [REDACTED] objected to the testimony of Detective [REDACTED] and Police Officer [REDACTED] as "highly prejudicial" and "lacking in probative value," and should be stricken from the record. Such objection is without merit, and the request to strike their testimony is denied. The agency representative, Mr. [REDACTED], in his closing argument responded that the testimony of those police officers was consistent, reliable and relevant to these cases, as explained in Findings of Fact #13 and #14 above. Furthermore, this ALJ found the testimony of those witnesses to be credible and reliable. In fact, Officer [REDACTED] in his testimony admitted that he did not have direct knowledge of whether [REDACTED] was used for "storage" prior to his July 16, 2015 visit to that property, but he was able to confirm that even as of July 16, 2015 (months after the April 1, 2015 discontinuance), [REDACTED] remained only a "storage" unit and not a place of residence. Moreover, Mr. [REDACTED] was simply unable to provide any reliable testimony as to where he lived during the period in question, if he did not reside with Ms. [REDACTED] and her children at [REDACTED].

Ms. [REDACTED] made many other unsubstantiated allegations or accusations in her written closing argument. However, those allegations were not established with reliable evidence in the hearing record.

Neither Ms. [REDACTED], Mr. [REDACTED] nor Ms. [REDACTED] were able to reliably refute the county agency's case, given the evidence indicated in the above Findings of Fact.

During the hearing and in her written closing argument, Ms. [REDACTED] also attempted to undermine the agency's case, and to create some questions about the reliability of the agency's case. Ms. [REDACTED] was also not convincing in her many allegations. Petitioner attempted to undermine the reliability of documents (Exhibits F through I) by arguing that she had basically no interest in the business, [REDACTED]. However, she was unable to refute the significant documentation of her substantial involvement as an operator or manager/co-owner of that business. See Finding of Fact #14 above. Such clear inconsistencies and contradictions in her testimony undermined her overall credibility.

In addition, Ms. [REDACTED] continued to argue and insist that Mr. [REDACTED] resided at [REDACTED] during the period in question. Such allegation was not credible because there is reliable evidence in the hearing record that [REDACTED] has been used for "storage" since about 2008. See Finding of Fact #13. In any case, the landlord, Mr. [REDACTED], was consistent in his testimony that he never issued any key to Mr. [REDACTED] to live at [REDACTED] and that if he needed to talk with Mr. [REDACTED] he went to [REDACTED]. The petitioner did present a questionable document from Mr. [REDACTED] alleging that Ms. [REDACTED] and Mr. [REDACTED] lived separately, but the authenticity of that document contradicted more credible and reliable testimony and evidence in the hearing record. Furthermore, Mr. [REDACTED]' testimony in conjunction with the reliable testimony of Detective [REDACTED] and Officer [REDACTED] made very clear that [REDACTED] was a storage unit, not a residence for [REDACTED]. Moreover, Ms. [REDACTED] attempted to ignore the fact that she and [REDACTED] have two very young children together which in itself creates a strong likelihood that they reside together as they are "living" in an attached duplex.

On page one of his written September 25, 2015 Reply argument, Mr. [REDACTED] stated convincingly in pertinent part:

To address Ms. [REDACTED]'s claims of successfully verifying her living arrangement; evidence she presented was contradictory to landlord [REDACTED]'s testimony, to Detective [REDACTED]'s testimony, and to Officer [REDACTED]'s testimony. In measuring credibility and motive the landlord, detective, and officer should all be considered more credible since all have remained consistent in testimony and lack motive. Ms. [REDACTED]'s credibility due to inconsistent statements and motive (to remain eligible for benefits) should be considered questionable at best. The property of [REDACTED] is inhabited by both Ms. [REDACTED] and Mr. [REDACTED]. They have been residents of the property since at least 2008. The property of [REDACTED] is a vacant property since at least 2008 and [REDACTED] continues to be a vacant property. Mr. [REDACTED] has never been issued keys during the time frame in question to live at [REDACTED]. Mr. [REDACTED] only has access to the garage at [REDACTED] for storage with [REDACTED]'s assistance to unlock. The agency has also demonstrated that leasing documents provided by both Ms. [REDACTED] and Mr. [REDACTED] are highly questionable and likely forged without the consent of [REDACTED]. The couple has made a deliberate effort to hide the fact they reside together in order to maintain separate public assistance cases.

Ms. [REDACTED] attempted to undermine Mr. [REDACTED]' reliability by alleging in vague terms that there may have been some type of affair between herself and Mr. [REDACTED] which ended badly resulting in Mr. [REDACTED] wanting to "retaliate against her." Such allegation was not established. In fact, Ms. [REDACTED] did not ask any question of Mr. [REDACTED] during his testimony regarding any motive for why he testified that [REDACTED] was only for storage, and that she and [REDACTED] resided together since 2008. What is most probative and reliable at this point was Mr. [REDACTED] testimony under oath at the hearing, and that his testimony was

consistent with what he told Mr. [REDACTED] in his fraud investigation and Detective [REDACTED] in his interview with Mr. [REDACTED].

The petitioner was unable to refute the county representative's testimony or documentation that her boyfriend (and the father of two of her children) resided in her household, and that his income must be verified in order for the county agency to determine whether petitioner continues to be eligible for BC benefits. Based upon the hearing record, petitioner has failed to provide the requested verification to the agency about [REDACTED] [REDACTED]. Accordingly, for the above reasons, I conclude that the county agency correctly discontinued the petitioner's BC benefits effective April 1, 2015, due to failure to timely provide required verification regarding the father of her children in her home and his income in order to determine his/her continued BC eligibility and benefits.

CONCLUSIONS OF LAW

1. Both [REDACTED] [REDACTED] and [REDACTED] [REDACTED] failed to timely provide required accurate household composition and income verification of [REDACTED] [REDACTED], and did not establish any good cause for such failure.
2. The county agency correctly discontinued petitioner's Badger Care (BC) Plus benefits effective April 1, 2015, due to the failure to timely verify to the county agency [REDACTED] [REDACTED]'s accurate residence and his income needed to determine petitioner's continued BC eligibility and benefits.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

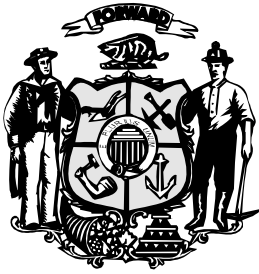
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of December, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 1, 2015.

Dane County Department of Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]